



**DIKE BRONSTEIN ROBERTS & CUSHMAN
INTELLECTUAL PROPERTY PRACTICE GROUP
EDWARDS & ANGELL
P.O. BOX 9169
BOSTON, MA 02209**

COPY MAILED

MAY 14 2002

In re Application of	:	OFFICE OF PETITIONS
Hiroshi Urabe	:	
Application No. 09/870,716	:	DECISION DISMISSING
Filed: May 30, 2001	:	PETITION
For: FLAME RETARDANT RESIN	:	
COMPOSITION	:	

This is a decision on the petition filed October 1, 2002, which is being treated under 37 CFR 1.10(d), requesting that the above-identified application be accorded a filing date of May 29, 2001, rather than the presently accorded filing date of May 30, 2001.

Applicant requests the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on May 29, 2001, pursuant to the requirements of 37 CFR 1.10. Applicant acknowledges that the date of deposit in Express Mail shown on the applicant's Express Mail receipt is May 30, 2001, but argues that the application was actually deposited in Express Mail service on May 29, 2001.

Paragraph (a) and 37 CFR 1.10 states that:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See § 1.6(a). (Emphasis supplied).

Paragraph (d) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other

official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS."

A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in 'Express Mail Post Office to Addressee' service prior to the last scheduled pick-up for that day." In addition, the showing must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS." Evidence from the USPS may be the Express Mail Corporate Account Mailing Statement. Evidence that came into being within one day after the deposit of the correspondence as Express Mail may be in the form of a log book which contains information such as the place, date and time of deposit; the time of the last scheduled pick-up for that date; and the date and time of entry in the log and of any other official notation by the USPS relied upon to show the date of deposit.

The statement of Robert Rosco indicates that on May 29, 2001 and May 30, 2001, he was the person responsible for taking mail from Edwards & Angell personnel and delivering the mail to the United States Postal Service (USPS). The statement also indicates that Robert Rosco has no recollection as to the date he mailed the instant application, but is certain that it was not mailed on May 30, 2001 because he did not deliver any express mail to the USPS on May 30, 2001. In addition, the declaration of David G. Conlin indicates that the application was deposited by Robert Rosco at the USPS Express Mail window at or around 6:34 p.m. on May 29, 2001.

The showing of record does not provide the necessary corroborating evidence required by the rule, *supra*. Further, the statement in the declaration of David G. Conlin which indicates that the application was deposited at the USPS Express Mail window on May 29, 2001 is contrary to the statement made by Robert Rosco indicating that he has no recollection as to the date he mailed the application. Lastly, no evidence has been provided to show that the application was deposited at the USPS Express mail window on May 29, 2001, prior to the last scheduled pick-up of the day.

The petition filed October 1, 2001 is not accompanied by the evidence required by the rule. Accordingly, the petition is dismissed.

The application is being returned to the Office of Initial Patent Examination with the presently accorded filing date of May 30, 2001.

Telephone inquiries concerning this matter may be directed to Karen Creasy at (703) 305-8859.



Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy